

AMENDED IN ASSEMBLY APRIL 11, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 879

Introduced by Assembly Member Torrico

February 18, 2005

An act to amend Sections 98 and 98.2 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 879, as amended, Torrico. Employment law violations: remedies.

Under existing law, if an employee believes an employer has failed to pay wages required by contract or statute, the employee may either file a civil action against the employer or file a wage claim with the Labor Commissioner seeking administrative relief. Where the administrative remedy is pursued, either party may appeal the decision of the Labor Commissioner to the superior court, for a hearing de novo.

This bill would provide that, where an employer fails to file an answer to the administrative complaint, to attend the administrative hearing, and to seek relief for failing to do so, the superior court would not hear the appeal on a de novo basis, but would review the administrative decision only for an abuse of discretion, unless the superior court granted relief to the employer from the administrative decision under specified criteria.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 98 of the Labor Code is amended to
2 read:

3 98. (a) The Labor Commissioner is authorized to investigate
4 employee complaints. The Labor Commissioner may provide for
5 a hearing in any action to recover wages, penalties, and other
6 demands for compensation properly before the division or the
7 Labor Commissioner including orders of the Industrial Welfare
8 Commission, and shall determine all matters arising under his or
9 her jurisdiction. It is within the jurisdiction of the Labor
10 Commissioner to accept and determine claims from holders of
11 payroll checks or payroll drafts returned unpaid because of
12 insufficient funds, if, after a diligent search, the holder is unable
13 to return the dishonored check or draft to the payee and recover
14 the sums paid out. Within 30 days of filing of the complaint, the
15 Labor Commissioner shall notify the parties as to whether a
16 hearing will be held, or whether action will be taken in
17 accordance with Section 98.3, or whether no further action will
18 be taken on the complaint. If the determination is made by the
19 Labor Commissioner to hold a hearing, the hearing shall be held
20 within 90 days of the date of that determination. However, the
21 Labor Commissioner may postpone or grant additional time
22 before setting a hearing if the Labor Commissioner finds that it
23 would lead to an equitable and just resolution of the dispute.

24 It is the intent of the Legislature that hearings held pursuant to
25 this section be conducted in an informal setting preserving the
26 right of the parties.

27 (b) When a hearing is set, a copy of the complaint, which shall
28 include the amount of compensation requested, together with a
29 notice of time and place of the hearing, shall be served on all
30 parties, personally or by certified mail.

31 (c) Within 10 days after service of the notice and the
32 complaint, a defendant may file an answer with the Labor
33 Commissioner in any form the Labor Commissioner prescribes,
34 setting forth the particulars in which the complaint is inaccurate
35 or incomplete and the facts upon which the defendant intends to
36 rely.

37 (d) No pleading other than the complaint and answer of the
38 defendant or defendants shall be required. Both shall be in

1 writing and shall conform to the form and the rules of practice
2 and procedure adopted by the Labor Commissioner.

3 (e) Evidence on matters not pleaded in the answer shall be
4 allowed only on terms and conditions the Labor Commissioner
5 shall impose. In all these cases, the claimant shall be entitled to a
6 continuance for purposes of review of the new evidence.

7 (f) If the defendant fails to appear or answer within the time
8 allowed under this chapter, no default shall be taken against him
9 or her, but the Labor Commissioner shall hear the evidence
10 offered and shall issue an order, decision, or award in accordance
11 with the evidence. A defendant failing to appear or answer, or
12 subsequently contending to be aggrieved in any manner by want
13 of notice of the pendency of the proceedings, may apply to the
14 Labor Commissioner for relief in accordance with Section 473 of
15 the Code of Civil Procedure. The Labor Commissioner may
16 afford this relief. No right to relief, including the claim that the
17 findings or award of the Labor Commissioner or judgment
18 entered thereon are void upon their face, shall accrue to the
19 defendant in any court unless prior application is made to the
20 Labor Commissioner in accordance with this chapter.

21 (g) All hearings conducted pursuant to this chapter are
22 governed by the division and by the rules of practice and
23 procedure adopted by the Labor Commissioner.

24 (h) Whenever a claim is filed under this chapter against a
25 person operating or doing business under a fictitious business
26 name, as defined in Section 17900 of the Business and
27 Professions Code, which relates to the person's business, the
28 division shall inquire at the time of the hearing whether the name
29 of the person is the legal name under which the business or
30 person has been licensed, registered, incorporated, or otherwise
31 authorized to do business.

32 The division may amend an order, decision, or award to
33 conform to the legal name of the business or the person who is
34 the defendant to a wage claim, provided it can be shown that
35 proper service was made on the defendant or his or her agent,
36 unless a judgment had been entered on the order, decision, or
37 award pursuant to subdivision (e) of Section 98.2. The Labor
38 Commissioner may apply to the clerk of the superior court to
39 amend a judgment that has been issued pursuant to a final order,
40 decision, or award to conform to the legal name of the defendant,

1 provided it can be shown that proper service was made on the
2 defendant or his or her agent.

3 SEC. 2. Section 98.2 of the Labor Code is amended to read:

4 98.2. (a) Except as provided in subdivision (b), within 10
5 days after service of notice of an order, decision, or award, any
6 party may seek review by filing an appeal to the superior court,
7 where the appeal shall be heard de novo. A copy of the appeal
8 request shall be served upon the Labor Commissioner by the
9 appellant. For purposes of computing the 10-day period after
10 service, Section 1013 of the Code of Civil Procedure is
11 applicable.

12 (b) Notwithstanding subdivision (a), a party who has failed to
13 file an answer, to attend the administrative hearing, and to seek
14 administrative relief pursuant to subdivision (f) of Section 98,
15 shall not obtain a de novo hearing on appeal, but the superior
16 court shall review the administrative order, decision, or award for
17 an abuse of discretion only, unless the court finds that the
18 appellant is entitled to relief *from the forfeiture of a de novo*
19 *hearing* in accordance with ~~Sections~~ Section 473 or 473.5 of the
20 Code of Civil Procedure.

21 (c) Whenever an employer files an appeal pursuant to this
22 section, the employer shall post an undertaking with the
23 reviewing court in the amount of the order, decision, or award.
24 The undertaking shall consist of an appeal bond issued by a
25 licensed surety or a cash deposit with the court in the amount of
26 the order, decision, or award. The employer shall provide written
27 notification to the other parties and the Labor Commissioner of
28 the posting of the undertaking. The undertaking shall be on the
29 condition that, if any judgment is entered in favor of the
30 employee, the employer shall pay the amount owed pursuant to
31 the judgment, and if the appeal is withdrawn or dismissed
32 without entry of judgment, the employer shall pay the amount
33 owed pursuant to the order, decision, or award of the Labor
34 Commissioner unless the parties have executed a settlement
35 agreement for payment of some other amount, in which case the
36 employer shall pay the amount that the employer is obligated to
37 pay under the terms of the settlement agreement. If the employer
38 fails to pay the amount owed within 10 days of entry of the
39 judgment, dismissal, or withdrawal of the appeal, or the
40 execution of a settlement agreement, a portion of the undertaking

1 equal to the amount owed, or the entire undertaking if the amount
2 owed exceeds the undertaking, is forfeited to the employee.

3 (d) If the party seeking review by filing an appeal to the
4 superior court is unsuccessful in the appeal, the court shall
5 determine the costs and reasonable attorney's fees incurred by
6 the other parties to the appeal, and assess that amount as a cost
7 upon the party filing the appeal. An employee is successful if the
8 court awards an amount greater than zero.

9 (e) If no notice of appeal of the order, decision, or award is
10 filed within the period set forth in subdivision (a), the order,
11 decision, or award shall, in the absence of fraud, be deemed the
12 final order.

13 (f) The Labor Commissioner shall file, within 10 days of the
14 order becoming final pursuant to subdivision (e), a certified copy
15 of the final order with the clerk of the superior court of the
16 appropriate county unless a settlement has been reached by the
17 parties and approved by the Labor Commissioner. Judgment shall
18 be entered immediately by the court clerk in conformity
19 therewith. The judgment shall then have the same force and
20 effect as, and be subject to all of the provisions of law relating to,
21 a judgment in a civil action, and may be enforced in the same
22 manner as any other judgment of the court in which it is entered.
23 Enforcement of the judgment shall receive court priority.

24 (g) (1) In order to ensure that judgments are satisfied, the
25 Labor Commissioner may serve upon the judgment debtor,
26 personally or by first-class mail at the last known address of the
27 judgment debtor listed with the division, a form similar to, and
28 requiring the reporting of the same information as, the form
29 approved or adopted by the Judicial Council for purposes of
30 subdivision (a) of Section 116.830 of the Code of Civil
31 Procedure to assist in identifying the nature and location of any
32 assets of the judgment debtor.

33 (2) The judgment debtor shall complete the form and cause it
34 to be delivered to the division at the address listed on the form
35 within 35 days after the form is served on the judgment debtor,
36 unless the judgment has been satisfied. In case of willful failure
37 by the judgment debtor to comply with this subdivision, the
38 division or the judgment creditor may request the court to apply
39 the sanctions provided in Section 708.170 of the Code of Civil
40 Procedure.

1 (h) Notwithstanding subdivision (f), the Labor Commissioner
2 may stay execution of any judgment entered upon an order,
3 decision, or award that has become final upon a showing of good
4 cause and may impose the terms and conditions of the stay of
5 execution. A certified copy of the stay of execution shall be filed
6 with the clerk entering the judgment.

7 (i) When a judgment is satisfied in fact, other than by
8 execution, the Labor Commissioner may, upon the motion of
9 either party or on its own motion, order entry of satisfaction of
10 judgment. The clerk of the court shall enter a satisfaction of
11 judgment upon the filing of a certified copy of the order.

12 (j) The Labor Commissioner shall make every reasonable
13 effort to ensure that judgments are satisfied, including taking
14 appropriate legal action and requiring the employer to deposit a
15 bond as provided in Section 240.

16 (k) The judgment creditor, or the Labor Commissioner as
17 assignee of the judgment creditor, is entitled to court costs and
18 reasonable attorney's fees for enforcing a judgment rendered
19 pursuant to this section.